

One Utah Center
201 South Main Street, Suite 2100
Salt Lake City, UT 84111
(801) 220-4140 - FAX (801) 220-4725



A Subsidiary of PacifiCorp

VIA FEDERAL EXPRESS

August 12, 2005

Dan Zilmer
Region Manager
Merit Energy Company
13727 Noel Road, Suite 500
Dallas, TX 75240

Handwritten note:
Training
8/15/05

**RE: Cooperative Development Agreement Between PacifiCorp, Merit,
SITLA and DOGM**

Dear Mr. Zilmer:

Enclosed is a completely endorsed original of the referenced Agreement for your records. The other originals are being distributed to the other parties to the Agreement by way of this cover letter. See distribution list below.

We appreciate everyone's cooperation in this effort to facilitate multiple mineral development in this particular area.

Should you have any questions or concerns, please feel free to contact Doug Johnson (435-687-4712) or Chuck Semborski (435-687-4720) of our Energy West Mining Company or myself at 801-220-4612.

Sincerely,

Scott M. Child
Manager, Lands & Regulatory Affairs

Enclosure

SMC\EnergyWest\Merit2005-01.doc

cc: IMC w/copy encl. – D.W. Jense, B. King, C. Pollastro
PacifiCorp Fuels – N. Getzelman w/copy encl.
EWMC – Chuck Semborski w/original
DOGM – John R. Baza w/original
SITLA – Tom Faddies w/original
Stoel Rives – John S. Kirkham w/copy encl.

Cooperative Development Agreement ("Agreement")
Between
PacifiCorp
And
Merit Partners, L.P. & Merit Energy Partners III, L.P. (collectively "Merit")
And
The State of Utah School and Institutional Trust Lands Administration ("SITLA")
And
The Utah Division of Oil, Gas and Mining ("DOGM")

1. Purpose. The purpose of this Agreement is to establish a working relationship regarding multiple mineral development to insure the maximum utilization of the coal and oil and gas estates in certain lands in Emery County, Utah all in the interest of the conservation and full utilization of natural resources.

2. Respective Interests. The lands subject to this Agreement are located in Township 16 South, Range 6 East, Section 23: SW $\frac{1}{4}$ NE $\frac{1}{4}$, SLB&M, Emery County, Utah ("Area of Interest"). The interests of the parties are as follows:

PacifiCorp: PacifiCorp is the Lessee of Record with respect to Utah State Lease for Coal ML-48258.

Merit Partners LP & Merit Energy Partners III, LP: Merit is the working interest owner of United States Oil & Gas Lease U-17024.

School & Institutional Trust Lands Administration: SITLA is the owner of the coal estate subject to a right of reverter to the Bureau of Land Management ("BLM").

Utah Division of Oil, Gas and Mining: DOGM is the regulatory authority charged with enforcement of the provisions of PacifiCorp's approved Mining & Reclamation Plan and the Utah Administrative Rules governing the extraction of natural resources in the State of Utah.

3. Multiple Mineral Development. Merit is the owner and operator of a producing gas well in the Area of Interest identified as Well No. 32-23. The well was drilled in 1989. PacifiCorp is conducting active coal mining operations in the Area of Interest in the immediate vicinity of Well No. 32-23 by and through Interwest Mining Company, a wholly owned subsidiary, as its managing agent, and Energy West Mining Company, another wholly owned subsidiary, as mine operator. These mining operations are in the Deer Creek Mine in the 12th West longwall panel, off of the 7th North Mains. It is anticipated that the full extraction of PacifiCorp's 12th West longwall panel could potentially cause a subsidence impact on Well No. 32-23. The parties wish to enter into a proactive agreement to establish the working relationship among the parties as this multiple mineral development activity takes place so as to insure the

safe and effective compatible usage of both the coal and the oil and gas estates and to achieve maximum economic recovery of these natural resources.

4. Agreement.

A. PacifiCorp:

- i) Will communicate regularly with each of the other parties regarding the progress of the extraction of the 12th West longwall panel.
- ii) Will provide to Merit on a confidential basis geologic and engineering information needed to fully evaluate the relationship between Well No. 32-23 and PacifiCorp's mining operations.
- iii) Will repair, at PacifiCorp expense, any material damage caused by subsidence impacting Well No. 32-23 and/or the pipeline in the immediate vicinity of Well No. 32-23 utilized to transport natural gas from Well No. 32-23 to market. Such repairs shall be undertaken only after concurrence by Merit of a plan of action to be followed. If Well No. 32-23 cannot be returned to its former level of production, PacifiCorp agrees to be liable for the lesser of (i) the cost to redrill the well or (ii) the present value of the current and future production from Well No. 32-23 in its condition prior to damage less the present value of the current and future production from Well No. 32-23 in its condition after damage and any efforts to restore production.
- iv) Will for the period of time prior to the extraction of coal in the 12th West longwall panel and thereafter, for a minimum of six months following extraction of the adjacent 14th West longwall panel, maintain subsidence survey points within a 15° angle of draw to Well No. 32-23 and a well head pressure sensor on Well No. 32-23 to monitor well head movement and pressure on a regular basis (weather permitting) and will report to Merit the data obtained from said subsidence survey monitoring and the well head sensor.
- v) Will, in the event the well head pressure sensor or any other available information indicates that subsidence has had a material impact on Well No. 32-23, immediately report to Merit and mutually agree to an action plan to repair any damage that has occurred to the well or the associated pipeline.
- vi) Will release, indemnify and hold harmless Merit and its joint interest owners, partners, affiliates, contractors and the officers and directors of any of the foregoing from any and all third party claims, whether based in tort, contract, strict liability or otherwise and whether related to personal injury, property damage, trespass, environmental contamination or otherwise, resulting from PacifiCorp's operations hereunder.

B. Merit:

- i) Does hereby consent to the full extraction by PacifiCorp of the 12th West longwall panel.

- ii) Will communicate regularly with each of the other parties regarding the status of production from Well No. 32-23.
- iii) Will provide to PacifiCorp any and all rights of access necessary to allow PacifiCorp to monitor the subsidence impact to, and continued operation of Well No. 32-23 as described herein.
- iv). Will, subject to prior notification and agreement as to the repairs to be undertaken, allow PacifiCorp to take any and all corrective action necessary to repair material damage to the well.
- v) Will provide PacifiCorp with such data, on a confidential basis, as may be necessary to monitor the well and evaluate subsidence impact. Further Merit will take such protective measures to preserve the integrity of Well No. 32-23 as are customary in the industry in the absence of adjacent mining operations.
- vi) Will provide to PacifiCorp such technical support as may be needed to carry out the above-described activities, so long as such technical support does not cause Merit to incur material expenditure of money or resources without reimbursement by PacifiCorp.
- vii) Will take such further action, at PacifiCorp's expense, as may be necessary to protect the integrity of Well No. 32-23 from subsidence related damage caused by the extraction of 12th West longwall panel and subsequent future longwall panels north of 12th West panel.

C. SITLA:

- i) Does hereby consent to the terms of this Agreement and will administer the coal estate in the Area of Interest in accordance with its applicable laws and regulations.
- ii) Will process such future requests for administrative action relating to either the coal estate or the oil and gas estate as may be submitted by either PacifiCorp or Merit in accordance with applicable laws and regulations.
- iii) Will have management responsibility for all issues related to coal development in the area of interest.

D. DOGM:

- i) Does hereby acknowledge that this Agreement achieves the purposes and intents of Utah Administrative Code R649-3-27.2 such that a cooperative agreement exists between Merit and PacifiCorp which allows multiple mineral development.

E. The Parties Collectively:

- i) Will meet on an "as needed" basis to negotiate compatible usage and to provide for the continued conservation of natural resources in the event the occurrence of unanticipated events during the production of coal and gas from the Area of Interest require future operational changes.

- ii) Will work cooperatively to insure the maximum economic recovery of both the coal and gas estates takes place in such a way as to accomplish the purposes of this Agreement.

5. Governing Law. Each party shall comply with all applicable state and federal laws and regulations that govern their activities. This Agreement shall not be construed as limiting or affecting in any way the vested or delegated authority of the parties except as specifically set forth herein.

6. Notice. In order to insure proper notices received by the parties, any formal notice under this Agreement should be addressed as follows:

PacifiCorp:

Name: PacifiCorp
c/o Interwest Mining Company
Dee W. Jense, President
Address: 201 So. Main, Suite 2100
Salt Lake City, Utah 84111
Telephone: (801) 220-4140
Facsimile: (801) 220-4725
E-mail: dee.jense@pacificorp.com

Merit:

Name: Dan Zilmer, Region Manager
Address: 13727 Noel Road, Suite 500
Dallas, TX 75240
Telephone: (972) 628-1503
Facsimile: (972) 960-1252
E-mail: dan.zilmer@meritenergy.com

SITLA:

Name: Kevin Carter, Director
Address: 675 East 500 South, Suite 500
Salt Lake City, UT 84102
Telephone: (801) 538-5100
Facsimile: (801) 355-0922
E-mail: kevincarter@utah.gov

DOGM:

Name: John Baza, Director
Address: 1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801
Telephone: (801) 538-5334
Facsimile: (801) 359-3940
E-mail: johnbaza@utah.gov

Informal Correspondence, Safety Concerns and Day to Day Operational Communication should be addressed as follows:

PacifiCorp

Name: PacifiCorp
c/o Energy West Mining Company
Attn: Manager, Administration & Technical Services
Address: P.O. Box 310
Huntington, Utah 84528
Telephone: (435) 687-4712
Facsimile: (435) 687-2695
E-mail: douglas.johnson@pacificorp.com

Merit

Name: Dan Zilmer
Address: 13727 Noel Road, Suite 500
Dallas, TX 75240

Telephone: (972) 628-1503
Facsimile: (972) 960-1252
E-mail: dan.zilmer@meritenergy.com

Any party may change the person to receive notice or the notice address by written notice to the other party.

7. Dispute Resolution: Upon written notice of a failure to cooperate in accordance with the terms of this Agreement, any party may provide written notice to the other parties and each of the designated representatives of the parties will make reasonable efforts to informally resolve the dispute.

- A. The parties agree to use their mutual best efforts to meet and resolve the dispute within fifteen (15) days of receipt of a written notice of the existence of the dispute.
- B. The parties do not anticipate that any dispute will arise regarding either the terms of or duties owed under this Agreement. However, in the event that some point of dispute does arise, the parties understand that both the BLM and the Board of Oil, Gas & Mining have jurisdiction to participate in dispute resolution depending upon the nature of the dispute between the parties.

8. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

9. **Termination.** This Agreement will terminate at such time as Merit and PacifiCorp agree that any future risk of subsidence damage to Well No. 32-23 is minimal or December 31, 2009, whichever is first to occur.

10. **Effective Date.** This Agreement is in effect on final signing and dating of the document and it may be executed in counter parts.

PacifiCorp

By: [Signature] 8-10-05
Its: Assistant General Manager

Merit Partners, L.P.
Merit Energy Partners III, L.P.
By: Merit Energy Company, General Partner

By: [Signature] 8-4-05
Its: Region Mgr

**The State of Utah School & Institutional Trust Lands
Administration**

By: [Signature]
Its: Assistant Director 8-11-05

The Utah Division of Oil, Gas and Mining

By: [Signature]
Its: Director 8-12-05